

**BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION**

Sep 27, 2010

**FILED
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**IN RE: DEPUY ORTHOPAEDICS
ASR HIP IMPLANT LITIGATION :**

: MDL NO. 2197

: BRIEF IN SUPPORT OF PLAINTIFF'S

: MOTION FOR TRANSFER OF ACTIONS

: PURSUANT TO 28 U.S.C. § 1407

: ORAL ARGUMENT REQUESTED

**INTERESTED PARTY
RESPONSE OF PLAINTIFF IDA MOSLEY**

On September 21, 2010, Plaintiff, Ida Mosley filed suit in the Eastern District of Louisiana, *Ida Mosley v. DePuy Orthopedics, Inc., and Johnson & Johnson Services, Inc.*, Case No. 2:10-cv-03206, alleging that Defendants have known that their hip replacement devices, the ASR XL Acetabular System and ASR Hip Resurfacing Platform, are prone to fail within approximately two years of implantation despite the fact that such hip implant devices are supposed to last more than fifteen years. They have also known that the implant's metal "ball" and "socket" bearings that make up the hip-joint generate metal debris over time from wear and tear that can spread throughout the patient's surrounding bone and tissue.

On September 23, 2010, Plaintiffs, Maurice Brigham and Lance Orland, individually, and on behalf of all others similarly situated filed a Motion for Transfer of Action in Support of Actions Pursuant to 28 U.S.C. § 1407 to the District of New Jersey.

Pursuant to 28 U.S.C. § 1407 and the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, Plaintiff submits this Interested Party Response in support of transfer and consolidation of the DePuy Orthopedics ASR Hip Implant Litigation actions to a single district for coordinated pretrial proceedings.

As of September 24, 2010 there were at least seven (7) actions filed in various courts throughout the nation against DePuy Orthopedics. 28 U.S.C. § 1407 provides for transfer of actions to one district for coordinated or consolidated pretrial proceedings where actions pending in different districts involve one or more common questions of fact. 28 U.S.C. § 1407(a). Consolidation and coordination of these cases is unquestionably appropriate and there appears to be no disagreement among the parties that coordination or consolidation is appropriate. The real disagreement is which transferee forum is most appropriate.

There are numerous factors which the Panel typically takes into consideration in determining the most appropriate transferee forum. Among those factors are the number of cases pending in the jurisdiction, convenience of the parties, location of witnesses and other evidence, whether the district is in an accessible metropolitan location, the caseload of the transferee district, and experience in management of class actions and complex litigation. See, e.g., *In re Wheat Farmers Antitrust Class Action Litig.*, 366 F. Supp. 1087, 1088 (J.P.M.L.1973); *In re Preferential Drug Prods. Pricing Antitrust Litig.*, 429 F. Supp. 1027, 1029 (J.P.M.L. 1977); *In re Tri-State Crematory Litig.*, 206 F. Supp. 2d 1376, 1378 (J.P.M.L. 2002); *In re General Motors Corp. Dex-Cool Products Liability Litig.*, 293 F. Supp. 2d 1381, 1382 (J.P.M.L. 2003); *In re Educ. Testing Serv. Prt 7-12 Test Scoring Litig.*, 350 F. Supp. 2d 1363, 1365 (J.P.M.L. 2004).

Given the expected magnitude and scope of this litigation, Plaintiff respectfully submits that three factors should primarily guide this Panel's determination. Those factors include the convenience of the venue for the parties, the speed of the docket of the transferee forum and the experience of the transferee judge. While there are multiple venues that might be appropriate, Plaintiff proposes the District of New Jersey and the Northern District of California as districts that can ably manage this complex litigation, with correspondingly experienced jurists who can shepherd the pretrial proceedings in these consolidated cases.

A. The District Of New Jersey Would Both Be An Appropriate Venue.

Although cases are and will be pending in numerous Districts, the most expedient venue for all parties is likely to be the District of New Jersey. This is because the District of New Jersey is well versed in handling mass tort litigation, and more specifically, with handling products liability cases involving hip implant devices. For instance, the District of New Jersey handled both the 2001 litigation involving the defective Inter-Op brand hip replacement implants sold by Sulzer Orthopaedics, and the currently pending *In re: Zimmer Durom Hip Cup Products Liability Litigation*. In addition, Defendant Johnson & Johnson's corporate headquarters, which house many of the relevant documents, as well as many of its officers and employees likely to be deposed, are located in New Brunswick, New Jersey. Pretrial proceedings in this district will therefore save money and time for both sides.

Due to differences in the harmful effects that patients have experienced or will experience, and whether patients have undergone revision surgery to remove and replace the implants, or will undergo such revision surgery, this case is likely to involve multiple classes of plaintiffs, some of which may number in the hundreds or thousands. It will involve scientific evidence and expert testimony in a number of fields, ranging from orthopaedics to genotoxicity. The duration, complexity and scale of discovery may be comparable to the Vioxx litigation, which the presiding court described as follows:

When the parties formally announced the settlement agreement, Vioxx-related discovery had been moving forward in the coordinate jurisdictions for more than six years. Over 50 million pages of documents had been produced and reviewed, more than 2,000 depositions had been taken, and counsel for both sides had filed thousands of motions and consulted with hundreds of experts in the fields of cardiology, pharmacology, and neurology.

In re Vioxx Products Liability Litigation, 574 F.Supp.2d 606, 609 n.6 (E.D. La. 2008).

B. The Northern District of California Is Also An Appropriate Venue.

Like New Jersey, the Northern District of California would be an appropriate forum.

A significant factor in determining where to transfer this matter – a factor just as important as venue – is the ability of the judge to manage it. Plaintiffs respectfully request that the Panel consider transferring this case to the Honorable Susan Illston who authored the California Complex Litigation Manual (1990) and is ideally suited for this case. In the DePuy Orthopaedics case before her, she has already conducted hearings, issued orders in reference to evidence and set a first status conference.

San Francisco is a major metropolitan area with jet service to all major airports throughout the country.

CONCLUSION

While many appropriate venues have been suggested, Plaintiff respectfully suggests that the Panel transfer these actions to either the District of New Jersey or the Northern District of California.

Dated: September 24, 2010

Respectfully submitted:

NEBLETT, BEARD & ARSENAULT

By: 

Richard J. Arsenault - LA Bar Roll # 02563
C. Michael Bollinger - LA Bar Roll #01259
2220 Bonaventure Court
P.O. Box 1190
Alexandria, LA 71309
Telephone: (318) 487-9874
rarsenault@nbalawfirm.com
mbollinger@nbalawfirm.com

W. Mark Lanier – Bar Roll #11934600
LANIER LAW FIRM, PC
6810 FM 1960 West
Houston, TX 77069
Phone: (713) 659-5200
Fax: (713) 659-2204
wml@lanierlawfirm.com

Richard D. Meadow – Bar Roll #1963578
LANIER LAW FIRM, PC
126 East 56th Street
New York, NY 10022
RDM@lanierlawfirm.com

Dana B. Tascher, Esq. - Bar Roll #135494
LANIER LAW FIRM, PC
2049 Century Park East, Suite 1940
Los Angeles, CA 90067
Phone: (310) 277-5100
Fax: (310) 277-5103
dbt@lanierlawfirm.com

Attorneys for Plaintiff

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**IN RE: DEPUY ORTHOPAEDICS ASR
HIP IMPLANT LITIGATION**

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PROOF OF SERVICE

I hereby certify that a copy of the foregoing Motion, Brief, Request for Oral Argument, Schedule of Actions, and this Proof of Service was served by United States mail with postage paid thereon on August 31, 2010, to the following:

Clerk, Northern District of California, San Francisco, CA

Clerk, Middle District of Florida, Ft. Myers, FL.

Clerk, Northern District of Illinois, Chicago, IL.

Clerk, District of Maryland, Baltimore, MD.

Clerk, District of Utah, Salt Lake City, UT.

DePuy Orthopaedics, Inc.
c/o CT Corporation System
818 W. 7th St.
Los Angeles, CA 90017
N.D. Cal., No. CV10-3886-EMC

Johnson & Johnson Services, Inc.
c/o CT Corporation System
818 W. 7th St.
Los Angeles, CA 90017
N.D. Cal., No. CV10-3886-EMC

Gregg J. Borri
Gregg J. Borri Law Offices
Suite 2820
61 Broadway
New York, NY 10006
Counsel for Plaintiff: Kathleen Margenau
M.D. Florida, No. 2:10-cv-00369-CEH-SPC

Brian S. Franciskato
Nash & Franciskato Law Firm
Suite 170
2300 Main St.
Kansas City, FL 64108
Counsel for Plaintiff: Kathleen Margenau
M.D. Florida, No. 2:10-cv-00369-CEH-SPC

Altom M. Maglio
Maglio Christopher Toale & Pitts Law Firm
Second Floor
1751 Mound St.
Sarasota, FL 34236
Counsel for Plaintiff: Kathleen Margenau
M.D. Florida, No. 2:10-cv-00369-CEH-SPC

Edward W. Gerecke
Carlton Fields, PA
4221 W Boy Scout Blvd – Ste 1000
PO Box 3239
Tampa, FL 33601-3239
Counsel for Defendant: DePuy Orthopaedics, Inc.
M.D. Florida, No. 2:10-cv-00369-CEH-SPC

Kurt D. Hyzy
Pamela G. Sotoodeh
The Law Group, Ltd.
Three First National Plaza
50th Floor
Chicago, IL 60602
Counsel for Plaintiff: Patrick Joseph Fitzgerald
N.D. Ill, No. 1:10-cv-04822

DePuy Orthopaedics, Inc.
c/o CT Corporation System
208 So. LaSalle St., Suite 814
Chicago, Ill. 60604
N.D. Ill., No. 1:10-cv-04822

Johnson & Johnson Services, Inc.
c/o CT Corporation System
208 So. LaSalle St., Suite 814
Chicago, Ill. 60604
N.D. Ill., No. 1:10-cv-04822

Michael John Winkelman
Shireen Jayatilaka
McCarthy and Winkelman LLP
One Town Center
4201 Northview Dr., Suite 410
Bowie, MD 20716
Counsel for Plaintiff: Sandra Bloom
D. Maryland, No. 1:10-cv-02170-BEL

DePuy Orthopaedics, Inc.
c/o THE CORPORATION TRUST INCORPORATED
300 E LOMBARD ST
BALTIMORE, MD 21202
D. Maryland, No. 1:10-cv-02170-BEL

Johnson & Johnson Services, Inc.
NATIONAL REGISTERED AGENTS, INC. OF MD.
SECOND FLOOR
836 PARK AVENUE
BALTIMORE, MD 21201
D. Maryland, No. 1:10-cv-02170-BEL

Jack B. Burns
411 S. Main
P.O. Box 1398
Cedar City, UT 84721-1398
Counsel for Plaintiffs: Hilda Frances Williams and William Williams
D. Utah, No. 2:10-cv-00691-CW

Lauren A. Shurman
John A. Anderson
Stoel Rives
201 S. Main St., Suite 1100
Salt Lake City, UT 84111-4904
Counsel for Defendant: DePuy Orthopaedics, Inc.
D. Utah, No. 2:10-cv-00691-CW



RICHARD J. ARSENAULT

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ASR HIP IMPLANT LITIGATION : **REQUEST FOR ORAL ARGUMENT IN**
: **SUPPORT OF MOTION FOR TRANSFER**
: **OF ACTIONS TO THE DISTRICT OF NEW**
: **JERSEY PURSUANT TO 28 U.S.C. § 1407**
: **FOR COORDINATED AND CONSOLIDATED**
: **PRETRIAL PROCEEDINGS**
:
:
:
: **ORAL ARGUMENT REQUESTED**

Plaintiff, Ida Mosley, plaintiff in *Ida Mosley v. DePuy Orthopaedics, Inc. and Johnson & Johnson*, 2:10-cv-03206, currently pending in the United States District Court for the Eastern District of Louisiana, by and through her undersigned counsel, hereby requests oral argument before the Judicial Panel on Multidistrict Litigation.

Dated: September 24, 2010

Respectfully submitted:

NEBLETT, BEARD & ARSENAULT

By: 

Richard J. Arsenault - LA Bar Roll # 02563
C. Michael Bollinger - LA Bar Roll #01259
2220 Bonaventure Court
P.O. Box 1190
Alexandria, LA 71309
Telephone: (318) 487-9874
rarsenault@nbalawfirm.com
mbollinger@nbalawfirm.com

W. Mark Lanier – Bar Roll #11934600
LANIER LAW FIRM, PC
6810 FM 1960 West
Houston, TX 77069
Phone: (713) 659-5200
Fax: (713) 659-2204
wml@lanierlawfirm.com

Richard D. Meadow – Bar Roll #1963578
LANIER LAW FIRM, PC
126 East 56th Street
New York, NY 10022
RDM@lanierlawfirm.com

Dana B. Tascher, Esq. - Bar Roll #135494
LANIER LAW FIRM, PC
2049 Century Park East, Suite 1940
Los Angeles, CA 90067
Phone: (310) 277-5100
Fax: (310) 277-5103
dbt@lanierlawfirm.com

Attorneys for Plaintiff